

misleading. This ruling should extend to all such surcharges imposed by telecommunications carriers. NASUCA has identified here several surcharges that violate the *TIB Order*; NASUCA is certain that there are numerous other carriers' surcharges that also should be forbidden.

There is no doubt that companies engaging in these billing strategies will assert that Commission action prohibiting such surcharges is an unconstitutional infringement on the carriers' First Amendment right of free speech. The Commission should not be swayed by such arguments.

1. By Prohibiting Such Carrier Surcharges, the Commission Is Not Regulating Carrier "Speech," But Rather Carrier "Conduct."

In his lengthy dissent to the *TIB Order*, then-Commissioner Furchtgott-Roth noted his First Amendment concerns with the majority's decisions regulating the *content* of carrier surcharges recovering costs associated with federal regulatory programs and requirements (e.g., universal service, local number portability).¹⁶⁵ These concerns focused on the "standardized labeling" regulations adopted by the Commission and were based on Commissioner Furchtgott-Roth's belief that the Commission's regulations "involve censorship of speech integrally related to a political dispute over social policy and taxation."¹⁶⁶ Ultimately, Commissioner Furchtgott-Roth concluded that the Commission's "standardized labeling" regulations likely would not pass muster under the four-part analysis under which regulation of commercial speech is assessed.¹⁶⁷

NASUCA is not, however, petitioning the Commission to regulate the content of the

¹⁶⁵*TIB Order*, "Dissenting Statement of Commissioner Harold Furchtgott-Roth," "Furchtgott-Roth Dissent") at 88-101.

¹⁶⁶*Id.* at 88.

¹⁶⁷*Id.* at 90-97; see also *TIB Order*, ¶ 62, fn. 174, citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564 (1980).

information carriers provide in association with telecommunications-related surcharges. Rather, NASUCA is petitioning the Commission to regulate the conduct of carriers. NASUCA is asking the Commission to prohibit carriers' unreasonable, misleading and deceptive conduct – namely their efforts to maintain ostensibly low monthly and per-minute rates for the telecommunications services provided, while at the same time recovering (or over-recovering) ordinary operating costs through a welter of surcharges that may be totally unrelated to government action.

The purpose of the carriers' surcharges is clear: The surcharges allow carriers to tout low monthly and per minute rates for telecommunications service while they protect their bottom line or enhance their profits by means of line items, surcharges and fees.

As Commissioner Furchtgott-Roth noted, the Commission can regulate conduct directly, and more easily, than speech.¹⁶⁸ The proliferation of hidden line items, surcharges and fees among carriers warrants immediate regulatory intervention by the Commission in order to ensure that consumers know what they're paying for and how much they're going to pay. If the Commission does not prohibit this practice among carriers, consumers are certain to see more and more surcharges, fees, assessments and charges appearing on their monthly telephone bills. And the Commission is certain to hear from those consumers – and their Congressional representatives.

2. Even If Prohibiting the Offending Charges Constitutes Regulation of Commercial Speech, Such Regulation Is Not Unconstitutional.

Even if Commission action prohibiting the offending charges is deemed to constitute

¹⁶⁸ Furchtgott-Roth Dissent at 97, citing *44 Liquormart v. Rhode Island*, 517 U.S. 484, 507, 512 & 520 (1996).

regulation of commercial speech – as opposed to conduct – such regulation is not an unconstitutional violation of the carriers’ First Amendment rights. As the Commission has previously noted, “[c]ommercial speech that is misleading is not protected speech and may be prohibited.”¹⁶⁹

As discussed above, the monthly surcharges being imposed by IXC’s and wireless carriers, regardless of how they are named and regardless of what disclaimers accompany them on customers’ phone bills, are inherently misleading or deceptive. Prohibiting the surcharges is consistent with Supreme Court rulings addressing federal agencies’ power to regulate, even prohibit, commercial speech that is misleading.

E. The Commission Should Declare that Carriers May Not Impose Surcharges, Line Items or Fees on Customers Unless Such Charges Are Mandated by Federal, State or Local Law.

By this Petition, NASUCA is not seeking to overturn the Commission’s decision allowing carriers to recover certain specific costs or assessments mandated by regulatory action by means of line item charges. Instead, NASUCA is seeking a ruling declaring that carriers are prohibited from imposing any line item charges unless those charges -- and their line-item recovery -- are specifically mandated by federal, state or local regulatory action.¹⁷⁰ Carriers should be able to recover contributions to state universal service funds, 911/E911 systems, TRS

¹⁶⁹*TIB Order*, ¶ 60, citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-64 (1980).

¹⁷⁰Of course, if the federal, state or local law prohibits recovery of the particular cost by means of line item charges, then carriers could not, by virtue of the Commission’s declaratory ruling, nonetheless impose such charges in violation of the law. For example, Georgia law prohibits recovery of carrier contributions to the state universal service fund through separate surcharges. See O.C.G.A. §46-5-167(h).

costs, etc., via specific line item charges, but only if they are expressly mandated by the Commission or by state or local government.

Moreover, those charges should match the assessment imposed by regulatory action, as is the case with the federal universal service surcharges. In no event should carriers be allowed to recover ordinary operating costs – including participating in and complying with the regulatory process, payment of real or personal property taxes, administrative costs of compliance with the law, access costs, etc. – by means of surcharges, line items or fees. Carriers should be allowed to recover their costs “in any lawful manner;” however, use of line items, surcharges and separate fees should be prohibited unless specifically mandated by a regulatory body.¹⁷¹ By virtue of such a ruling, consumers will be able to shop among carriers for the lowest rates, making “apples-to-apples” comparisons, knowing that the only additional charges that they are going to pay for service, are those charges that every other carrier is required to impose.

Furthermore, the Commission should bear in mind that carriers will not be harmed if the Commission prohibits their use of line item charges or fees to recover their purported costs of compliance with various federal or state regulatory programs. Carriers will not be harmed because prohibiting them from recovering regulatory compliance costs through monthly surcharges does not prevent them from recovering those costs. Nor will individual carriers be placed at a competitive disadvantage by adoption of NASUCA’s request. All carriers will be limited to imposing only those line item charges or fees mandated by government action.

Similarly all carriers will be required to impose exactly the same surcharges.

¹⁷¹ As a practical matter, this would mean that most carriers would recover their costs through the monthly and usage charges for the telecommunications services offered.

Regulatory compliance costs are valid costs of doing business and the carriers are entitled to recover their operating costs from customers. All NASUCA is advocating is that the carriers recover their regulatory compliance costs in their rates for the telecommunications services provided, just like any business recovers its costs in the price of its services or commodities, rather than through mysterious surcharges. Telecommunications carriers should not be allowed to continue to recover such costs through hidden fees and charges that are misleadingly labeled or described, and which bear no clear, rational relationship to the carriers' actual costs.

More importantly, in considering its response to NASUCA's Petition, the Commission should bear in mind precisely who the telecommunications laws are intended to benefit: the consumer. Unlike carriers, consumers *are* harmed if the Commission fails to act in the manner urged by NASUCA. If carriers' current practices are allowed to continue, consumers will continue to be frustrated and confused by the welter of surcharges, fees and taxes that appear on their monthly telephone bills. Consumers will continue to be confused and frustrated in their efforts to ascertain what those charges, fees and taxes are for, and whether they bear any relationship to the costs purportedly recovered by such line item charges. Consumers will continue to be misled about the true cost of the telecommunications services provided. Moreover, consumers will not reap the rewards of competition since inefficient carriers can mask their inability to provide quality service at low rates by simply shunting the costs of being inefficient into separate surcharges, line items and fees. And consumers will continue to be gouged by unscrupulous carriers that over-recover their operating costs through carrier line item charges.

V. CONCLUSION.

For all the foregoing reasons, the Commission should enter an order:

- (1) Considering the issues set forth in NASUCA's Petition in the Commission's "Truth-in-Billing" docket (CC Docket 98-170);
- (2) Conducting an investigation into the carrier practices and charges complained of in NASUCA's Petition;
- (3) Declaring the carrier practices and charges complained of to be unreasonable, unjust and unlawful, in violation of both the Commission's May 11, 1999, "First Report and Order and Further Notice of Proposed Rulemaking," in CC Docket 98-170, as well as Sections 201 and 202 of the Communications Act of 1934;
- (4) Prohibiting carriers from imposing any separate monthly fees, line items or surcharges unless: (a) such charge is mandated by federal, state or local law, and (b) the amount of such charge conforms to the amount expressly authorized by federal, state, or local governmental authority;
- (5) Granting such further relief as the Commission determines to be just and reasonable.

Dated: March 30th, 2004.

Respectfully submitted,
NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES



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ATTACHMENTS A - E

Important information about your telephone service

Beginning July 1, 2003, your bill will include a 99 cent per month Regulatory Assessment Fee. This fee will help AT&T recover the following costs: interstate access charges; regulatory compliance and proceedings costs and property taxes. This fee applies for each month in which you have any AT&T charges on your bill. This fee is not a tax or charge required by the government. For more information, please call 1-800-854-9940 or visit us at www.att.com/reg.

This Company is a utility regulated by the Public Service Commission of West Virginia.

FAQs

AT&T Regulatory Assessment Fee :: **FAQs**

1. Why do I have to pay this fee?
2. What does each customer pay?
3. How will I be assessed the Regulatory Assessment Fee if my bill contains multiple months?
4. If I don't have any AT&T charges in a month, will I still receive this charge?
5. How does this fee appear on AT&T customers telephone bill?
6. Are there any options that I can sign up for where the Regulatory Assessment Fee would not apply?
7. How much money is AT&T making on this?
8. Why didn't you notify me of this fee?
9. Does the Regulatory Assessment Fee count towards my Usage Minimum of \$5.00?
10. Is the Universal Connectivity Charge percentage assessed on the Regulatory Assessment Fee?
11. Does the Regulatory Assessment Fee apply to each phone line?
12. I have two homes. Can I combine my bills to avoid being charged the Regulatory Assessment Fee twice?

Questions & Answers

Q1. Why do I have to pay this fee?
A1. The Regulatory Assessment Fee will help AT&T recover the costs associated with interstate access charges, property taxes, and the expenses associated with regulatory proceedings and compliance. In the competitive environment we are in, we cannot continue to absorb these costs.

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Q2. What does each customer pay?
A2. The Regulatory Assessment Fee is 99 cents per month. This fee applies for each month in

which you have any AT&T charges on your bill.

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Q3. How will I be assessed the Regulatory Assessment Fee if my bill contains multiple months?

A3. The Regulatory Assessment Fee applies for each month in which you have any AT&T charges on your bill. For example, if you receive an AT&T bill covering three months, and for two of the three months you have AT&T charges, you will receive two fees.

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Q4. If I don't have any AT&T charges in a month, will I still receive this charge?

A4. If you do not have any AT&T charges in any given month, you will not be assessed the fee for that month.

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Q5. How does this fee appear on AT&T customers telephone bill?

A5. The Regulatory Assessment Fee appears as a separate line item on your bill. This fee appears in the "Other Charges and Credits" section of the Long Distance portion of your bill.

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Q6. Are there any options that I can sign up for where the Regulatory Assessment Fee would not apply?

A6. Yes. Customers enrolled in AT&T Local Service are not subject to the Regulatory Assessment Fee ([click here to see if AT&T Local is available in your area](#)). Also, if you are a low income customer and are enrolled in AT&T's Lifeline program, you are not subject to the Regulatory Assessment Fee. Please call 1-888-549-2803 to see if you qualify for AT&T's Lifeline program.

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Q7. How much money is AT&T making on this?

A7. The purpose of this charge is intended to recover our costs. The fee will help AT&T recover costs associated with interstate access charges, property taxes, and the expenses associated with regulatory proceedings and compliance.

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Q8. Why didn't you notify me of this fee?

A8. AT&T notified customers in their bills.

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Q9. Does the Regulatory Assessment Fee count towards my Usage Minimum of \$5.00?

A9. No

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Q10. Is the Universal Connectivity Charge percentage assessed on the Regulatory Assessment Fee?

A10. Yes

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⚡ Important Information for customers with more than one phone line


Q11. Does the Regulatory Assessment Fee apply to each phone line?

A11. If each phone line is maintained as a separate account, each bill you receive for those accounts will be subject to the fee. However, if they are consolidated onto one bill, the charges will be combined, and the fee will apply only to that bill. Please call 1-800-787-2177 (Alaska customers call 1-800-252-7266) and we will combine your calling charges onto one long distance bill.

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Q12. I have two homes. Can I combine my bills to avoid being charged the Regulatory Assessment Fee twice?

A12. If you have two homes with separate AT&T residential phone bills, please call 1-800-222-0300 and a representative will exempt your secondary residence from the Regulatory Assessment Fee, if billing capability permits.

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Dear Valued Sprint Customer:

Beginning in September 2003, your bill will include a 99 cent monthly Carrier Cost Recovery Charge each month you have any Sprint long distance charges or usage activity on your bill. This charge will help Sprint recover various costs, including the costs of administering relay services for deaf and hard-of-hearing consumers, the North American Numbering Plan, other regulatory compliance items, and certain property taxes. This charge is not a tax or otherwise required by the government.

Upon implementation of this new charge, Sprint will no longer assess the Carrier Property Tax charge.

If you have any questions about your account, please call the Customer Service number on your invoice.

Thank you for your continued loyalty to Sprint. We look forward to helping you with all your communication needs.



Verizon Wireless News**Increase In Regulatory Charge**

Beginning March 1, 2004, our Regulatory Charge, which helps defray Verizon Wireless' ongoing costs of complying with various regulatory mandates, will increase from \$0.05 to \$0.45 per month to help defray the costs of complying with the FCC's local number portability requirements. The Regulatory Charge is not a tax, is our charge and is subject to change from time to time. For more information please refer to your Customer Agreement regarding this change.

Do Not Call Registry

The Federal Communications Commission and the Federal Trade Commission recently enacted regulations to enable consumers to register their home and/or mobile phone numbers on the National Do Not Call Registry, "Registry," in an effort to stop calls to those numbers from telemarketers. Note that certain types of calls, including calls from companies with which consumers have an existing business relationship, are not covered by the regulations. To register phone numbers or to obtain more information about the Registry, go to www.donotcall.gov or call 1-888-382-1222.

Adjustment

Due to a billing error, you did not receive all of your Unlimited Nights and Weekends promotional allowance minutes on your October and/or November bill. We corrected the billing error and applied a credit to your account in the Adjustments section of this month's bill. We apologize for any inconvenience this may have caused.



Sprint PCS®

Helpful information about your PCS Invoice and PCS Service from Sprint

EXPLANATION OF TERMS ON YOUR INVOICE

For additional information, simply visit us at www.sprintpcs.com - sign on to manage your account and click the 'My Invoice' button.
Summary of Individual Phone Charges (page 2) - An excellent summary of all charges related to each PCS Phone on your account.

- **Monthly Service Charges** - The recurring charge for your PCS Service Plan and other services that are invoiced one month in advance.
- **Additional Usage Charges** - The column will show additional voice or roaming minutes or PCS Vision kilobytes/megabytes usage not in your main PCS Service Plan. This column may also contain charges for Call Forwarding and, depending on your plan, Call Waiting, Third Way Calling, Voice Command and certain Operator Service.
- **Other Charges** - Charges that are not included in the Monthly Service Charges section will appear here if applicable.
- **Promotions, Credits and Adjustments** - Special offers or pricing promotions appear as credits on your invoice. A disputed charge, when corrected, will appear on your invoice as an adjustment.
- **Taxes** - These include applicable federal, state, city, and county taxes.
- **Surcharges and Fees** - The surcharges in this section generally recover the costs incurred by Sprint in complying with various federal and state mandates. Charges that appear in this section of your invoice, including charges associated with Federal Wireless Number Pooling and Portability, Federal and State Universal Service Funds (USF) and Federal E911*, are neither taxes nor government-imposed assessments. The Federal USF charge is calculated using the FCC-prescribed contribution factor, which may change on a quarterly basis. Neither federal nor state law requires carriers to impose these charges but carriers are permitted to recover their costs of complying with these federal and state mandates.

Call 1-866-770-6690 for more information, including the current Federal USF invoice surcharge.

*Please note that current availability of E911 services is very limited. E911 service is dependent upon several factors, including the ability of your local public safety agency to receive and process this information and the capabilities of your equipment.

ANYTIME / NIGHT AND WEEKEND MINUTES

Please note that most PCS Service Plans are made up of both Anytime (peak) and Night and Weekend (off-peak) minutes with specific time allotted for each. The cost of a call is determined by your rate plan and Night and Weekend calls typically cost less than peak calls made during business hours.

HOW TO REACH PCS CUSTOMER SOLUTIONS

We are making every attempt to simplify your invoice so that it's easy to understand. Still have questions? Here's how to contact us:

By using your PCS Phone	Via the Internet	By Phone	By Mail	To Remit Payment
PCS Customer Solutions * 2	www.sprintpcs.com	PCS Customer Solutions 1-888-211-4727 Consumer 1-888-788-4727 Business	PCS Customer Solutions P.O. Box 8077 London, KY 40342	Sprint P.O. Box 219554 Kansas City, MO 64121-9554

TTY USERS ACCESS TO PCS CUSTOMER SOLUTIONS

Please contact a TRS agent (dial 711) and request that he/she dial 1-866-727-4888. PCS Customer Solutions inquiries can also be made via the Internet at www.sprintpcs.com.

ADDITIONAL PAYMENT OPTIONS

A number of convenient payment options are available to fit your lifestyle. In addition to making your payment, you may also sign up for Auto Pay on our Web site or by calling *2 on your PCS Phone along with having the ability to make a one-time payment through www.sprintpcs.com or *3 on your PCS Phone.

The Terms and Conditions of PCS Service sometimes change. For the most current version, please visit our Web site at www.sprintpcs.com or dial *2 for PCS Customer Solutions.

This invoice is due and payable upon presentation, and is past due if unpaid after the due date shown on page one of this invoice. Please make your check or money order payable to Sprint in U.S. dollars. Do not send cash. Payment is past due if we do not receive it by the due date shown on your invoice. Any payment for Services and equipment not made when due accrues late charges until paid at the rate of 5% per month or at the highest rate allowed by law. Sprint may also begin procedures to terminate services to you. You will be informed of any such termination action as required by law or the Terms and Conditions of Service. If any check sent to Sprint in payment for services is returned unpaid by your bank, you will be charged \$25, or the highest amount allowed by applicable law, for each returned check. Please provide your name and account number on any correspondence to Sprint. We will respond to your letter as soon as possible.

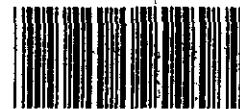
If you have a dispute about any charges on your invoice, you must notify us within 15 days of the date of the invoice or you will be deemed to have accepted the invoice. Initial notice of any dispute may be made by calling PCS Customer Solutions at 1-888-211-4727. You do not have to pay the disputed amounts while we investigate them; however, the amounts not in dispute are still due and payable by the due date. Puerto Rico Customers: You may obtain a copy of the Sprint Customer Complaint Resolution procedure by visiting one of the Sprint Stores in Puerto Rico or by contacting PCS Customer Solutions. This invoice constitutes notice that your service is subject to disconnection if payment is not received by the due date. California Customers: To resolve any service or invoicing issues, you should contact PCS Customer Solutions at the toll-free number listed above. Sprint rates for wireless services are not regulated by either federal or state regulators. However, should you be unable to resolve any service or invoicing issues directly with Sprint you may contact the Consumer Services Division of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.



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Account Number



Amount Due

For name changes sign on to www.sprintpcs.com Click on 'Contact Us' Email us > Enter your Email address > Click on 'Topic' Choose 'Other' > Enter name change & reason (Marriage, Divorce, Misspelled) For change of address sign on to the above Web site or complete this form. Please PRINT in Blue or Black ink.

MAILING ADDRESS _____

CITY _____

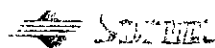
STATE _____

ZIP _____

HOME PHONE _____

BUSINESS PHONE _____

JVIN19



Sprint PCS

Account Summary

www.sprintpcs.com

Customer	Account Number	Invoice Period	Invoice Date	Page
		Aug 11 - Sep 10	Sep 11, 2003	2 of 11

Summary of Individual Charges (Individual Usage Summaries begin on page 3)					
Individual Information	Monthly Service Charges	Additional Usage Charges	Other Charges	Taxes */ Surcharges & Fees	Total
	59.99	36.05	0.00	7.40	103.44
	10.00	30.05	0.00	4.94	44.99
	10.00	0.00	0.00	4.02	14.02
Total Current Charges	79.99	66.10	0.00	16.36	\$162.45

* See below for a breakdown of Taxes, and Surcharges & Fees if applicable

Additional Billing Information

Detail of Taxes, and Surcharges & Fees

Description	Charges
Taxes	
Federal Tax	4.75
West Virginia State Wireless 911 Surcharge	2.96
Austin City District Tax	0.11
Austin City Sales Tax - Services & Usage	0.11
Texas State Sales Tax - Services & Usage	0.16
Texas State Wireless 911 Surcharge	0.30
Surcharges & Fees	
Federal Universal Service Fund	0.27
Federal 911	0.20
Federal Wireless Number Pooling And Portability	0.30
Texas State Universal Svc Fund Surcharge	0.36
Texas State Special Fee	0.13
	\$16.36